

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LOREN A. JOHNSON)	
Claimant)	
VS.)	
)	Docket No. 211,043 & 220,243
SIDING SUPPLY, INC.)	
STONEPOINT CONSTRUCTION)	
Respondents)	
AND)	
)	
INDIANA LUMBERMEN'S MUTUAL)	
NORTHWESTERN NATIONAL CASUALTY)	
Insurance Carriers)	

ORDER

Respondent, Siding Supply, Inc., and its insurance carrier, Indiana Lumbermen's Mutual, requested Appeals Board review of Administrative Law Judge Nelsonna Potts Barnes' preliminary hearing Order dated January 20, 1999.

RECORD

The Administrative Law Judge listed the record in her preliminary hearing Order as the preliminary hearing transcript dated October 31, 1996, the motion hearing transcript dated January 23, 1997, the preliminary hearing transcript dated April 29, 1997, and the preliminary hearing transcript dated August 4, 1998.

ISSUES

Claimant originally filed an Application for Hearing on March 25, 1996, alleging a date of accident of September 1994 and each and every day thereafter for a left shoulder injury. At the time of the injury, claimant alleged he was working for Siding Supply, Inc., (Siding Supply). This application was assigned Docket No. 211,043.

The first preliminary hearing in this matter was held on October 31, 1996, at the request of the claimant. In a preliminary hearing Order dated the same day, the

Administrative Law Judge appointed orthopedic surgeon Tyrone Artz, M.D., as claimant's treating physician for his left shoulder injury. Dr. Artz had referred claimant to Chris Miller, M.D., an orthopedic surgeon associated with Dr. Artz. The Administrative Law Judge also authorized Dr. Miller as an authorized treating physician.

During the time that claimant was under Dr. Artz' and Dr. Miller's treatment, an MRI examination on November 13, 1996, found disc herniations at C5-6 and C6-7. Claimant was then referred to Kris Lewonowski, M.D., another one of Dr. Artz's associates, for an opinion regarding claimant's cervical problems. Dr. Lewonowski examined claimant on December 23, 1996, but did not provide any further treatment because Dr. Artz had scheduled, on January 7, 1997, a left carpal tunnel release and an anterior transposition of claimant's left ulnar nerve at the elbow.

Dr. Artz' deposition was taken by the parties on February 6, 1997. On February 10, 1997, claimant filed an Application for Hearing alleging a date of accident of September 1995 and each and every working day thereafter while claimant was employed by Stoneypoint Construction (Stoneypoint). Claimant alleged bilateral carpal tunnel syndrome, shoulder, and neck injuries. Docket No. 220,243 was assigned to this application.

Siding Supply requested the August 4, 1998, preliminary hearing asking the Administrative Law Judge to terminate medical treatment for claimant's left shoulder and cervical injuries. In the Order dated January 20, 1999, that is the subject of this appeal, the Administrative Law Judge denied Siding Supply's request to terminate the medical treatment.

Siding Supply has appealed two preliminary hearing Orders entered by the Administrative Law Judge that relate to both Docket No. 211,043 and Docket No. 220, 043. The first preliminary hearing Order is dated January 19, 1999, and involves the preliminary hearing that was held on September 24, 1998. The second preliminary hearing is dated January 20, 1999, and involves a preliminary hearing held on August 4, 1998. In Siding Supply's application for review, both of the preliminary hearing Orders are appealed and one application raises two identical issues that apply to both Orders. Those issues are: did the claimant sustain an accidental injury that arose out of and in the course of his employment with Siding Supply and did the Administrative Law Judge exceed her jurisdiction in ordering preliminary hearing benefits?

But Siding Supply, in its brief, only submits arguments on the issue of whether claimant's left carpal tunnel syndrome and left ulnar nerve injuries are related to an accident that occurred at Siding Supply or are these injuries related to a later aggravation or a new injury. That issue was the subject of the preliminary hearing held on September 24, 1998, and the preliminary hearing Order dated January 19, 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The January 20, 1999, preliminary hearing Order resulting from a preliminary hearing held on August 4, 1998, that denied respondent's request to terminate medical treatment for claimant's left shoulder and cervical injuries, should be affirmed.

The Appeals Board finds the Administrative Law Judge's findings and conclusions, as expressed in the preliminary hearing Order, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. The Appeals Board hereby approves those findings and conclusions and adopts them as its own.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated January 20, 1999, should be, and the same is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Richard J. Liby, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director